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Supreme Ct.
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No. 05-

IN THE

Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

FREDERICK MENEFEE, Warden of the Otisville Federal Correctional Institution; THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MICHAEL S. POLLOK
Attorney for Petitioner
260 Madison Avenue-22nd Floor
New York, New York 10016
(212) 679-2900

196072

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Second Circuit erred when it failed to disqualify itself, pursuant to 28 U.S.C. § 455(a), from consideration of the petitioner's appeal even though the Second Circuit's Director of Legal Affairs is the former prosecutor who obtained the petitioner's conviction by a plea which the district court found to be coerced.

2. Whether the United States Court of Appeals for the Second Circuit erred when it found the district court's factual findings of petitioner's actual innocence and reasonable diligence "clearly erroneous" despite the unimpeached hearing testimony of the alleged complainant who denied he informed the prosecutor, now the Second Circuit's Director of Legal Affairs, that the petitioner had committed any crime against him.

3. Whether the Antiterrorism and Effective Death Penalty Act's ("AEDPA") one year period of limitation, codified at 28 U.S.C. § 2244(d)(1) is unconstitutional because it lacks an actual innocence savings clause similar to 28 U.S.C. §§ 2244(b)(2)(B)(ii) & 2255 and if § 2244(d)(1) is constitutional, should the limitation period be equitably tolled in this case.

4. Whether the abandonment and deceit of a retained attorney and the petitioner's inability to proceed *pro se* is an extraordinary circumstance warranting equitable tolling of 28 U.S.C. §§ 2244(d)(1) and 2244(d)(1)(A).

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following parties appear here and appeared before the United States Court of Appeals for the Second Circuit. The petitioner here and appellant below is "John Doe" and the respondents here and appellees below are Frederick Menefee, Warden of the Otisville Federal Correctional Institution and the Attorney General of the State of New York represented by the Westchester County District Attorney.[1]

[1] The district court granted permission to the petitioner to proceed using the pseudonym "John Doe". Neither the Federal Bureau of Prisons on behalf of Warden Frederick Menefee, nor Mr. Menefee personally, filed any briefs or motions in this case.

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